

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:09-cr-10054-MLW-1

4  
5 UNITED STATES OF AMERICA

6  
7 vs.

8 HUMZA ZAMAN  
9

10  
11 \*\*\*\*\*

12 For Hearing Before:  
13 Chief Judge Mark L. Wolf

14  
15 Plea Change

16  
17 United States District Court  
18 District of Massachusetts (Boston.)  
19 One Courthouse Way  
20 Boston, Massachusetts 02210  
21 April 28, 2009

22 \*\*\*\*\*

23 REPORTER: RICHARD H. ROMANOW, RPR  
24 Official Court Reporter  
25 United States District Court  
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1 P R O C E E D I N G S

2 (Begins, 4:45 p.m.)

3 THE CLERK: Criminal Matter 09-10054, the  
4 United States versus Humza Zaman. The Court is now in  
5 session. You may be seated.

6 THE COURT: Good afternoon. Would counsel  
7 please identify themselves for the Court and for the  
8 record.

9 MR. HEYMANN: Your Honor, I'm Steve Heymann on  
10 behalf of the government.

11 MR. BRACKLEY: Patrick Brackley,  
12 B-R-A-C-K-L-E-Y, 233 Broadway, New York, admitted to  
13 this Court pro hac vice --

14 THE COURT: Not yet.

15 MR. BRACKLEY: Not yet. I'm for the  
16 defendant, Judge, Mr. Zaman.

17 THE COURT: There's a motion. I haven't acted  
18 on the motion yet.

19 MR. HORSTMANN: Judge Dein did act on it this  
20 afternoon, your Honor.

21 THE COURT: That's news to me. Okay. It  
22 appears to be in order. And did she set conditions of  
23 release as well?

24 MR. HEYMANN: Yes, she did, your Honor.

25 THE COURT: All right. What are those

1 conditions?

2 MR. HEYMANN: Those conditions are \$100,000  
3 bond, unsecured. Reporting three times a week to  
4 Pretrial Services, I believe, once in person. Random  
5 drug testing. Turning in his passport. And travel  
6 restricted to New York, where he resides, and  
7 Massachusetts, where the court is, um, absent further  
8 motion to the Court. Plus, the standard and mandatory  
9 conditions.

10 THE COURT: Okay. And, as I understand it,  
11 the defendant wants to waive indictment and plead guilty  
12 to the one-count conspiracy information, is that right?

13 MR. BRACKLEY: That's correct, your Honor.

14 THE COURT: All right. And, Mr. Heymann, I'd  
15 appreciate it if you'd give me an overview of this  
16 case. There are many, many objects of the conspiracy  
17 charged and there are no co-conspirators charged in this  
18 case. Well, perhaps they had been before other judges.  
19 But what's this about?

20 MR. HEYMANN: If I may, your Honor, what I  
21 think what would be helpful is to, first of all, give  
22 you a broad picture of the varies other courts and then  
23 the statement of facts itself will give you his role  
24 within the conspiracy.

25 There are, in fact, five, I believe, separate

1 proceedings in this district right now. There is the  
2 principal case, as I'll call it, against the defendant,  
3 Albert Gonzalez, who I refer to, in the statement of  
4 facts, who was the primary motivating force of the --  
5 among other things, intrusion into or data theft from  
6 TJMax. There are separate cases in front of Judges  
7 Woodlock, Young, Gertner, and Bowler relating to  
8 co-defendants because they were charged by information  
9 and drawn to separate judges.

10 THE COURT: Why weren't the co-conspirators  
11 charged together?

12 MR. HEYMANN: It was the way -- what happened  
13 was that the, um -- each judge -- well, let's see.  
14 Christopher Scott and Patrick Tuey agreed to plead  
15 guilty and cooperate with the government prior to the  
16 charging of Albert Gonzalez and then we developed  
17 additional information that led us to the position that  
18 we could charge co-defendants Watt, Zaman and Jethro  
19 leading to sequential separate charges.

20 THE COURT: Why not superseding indictments so  
21 that one judicial officer would have a panoramic view of  
22 the case and an understanding of the relative roles of  
23 the defendants?

24 MR. HEYMANN: Well, with respect to the  
25 relevant roles of the defendants, it has been the

1 practice of the government, in each of these cases, to  
2 ensure that there was a common statement of facts that  
3 went, as part of the sentencing proceedings, um,  
4 relating to all of the various roles that are charged  
5 and the various people within those roles. It was  
6 simply the mechanics -- unfortunately the mechanics of  
7 the local rules, and if I may address those briefly,  
8 which simply do not allow consolidation in criminal  
9 cases in the way they do in civil cases.

10 THE COURT: They don't allow consolidation,  
11 but they permit superseding indictments.

12 The newspapers report you indicted Diane Wilkerson  
13 and then -- well, you superseded -- you didn't, you  
14 brought an information, then you indicted her, then you  
15 brought an information against Chuck Turner, and then  
16 you superseded the Wilkerson indictment and included  
17 Turner. Am I correct?

18 MR. HEYMANN: I don't know the answer, your  
19 Honor. I'm not participating in the Wilkerson  
20 proceeding. I know of it, but --

21 THE COURT: I think it can -- Judge Woodlock  
22 would say, you know, "Do you believe in infant  
23 baptism?" "Do I believe in it? I've seen it." I think  
24 it can be done. But anyway, it wasn't done here.

25 MR. HEYMANN: It wasn't done here. If I can

1 then if the -- if the Court so desires, I'll give the  
2 government's statement of facts in brief, which will  
3 explain his role within the conspiracy first, the first  
4 few minutes of which describe the overall conspiracy and  
5 then later his role.

6 Between approximately 2003 and 2007, a group led  
7 by Albert Gonzalez electronically broke into a number of  
8 large retailers' computer networks and including one  
9 belonging to OfficeMax. They would drive, scanning the  
10 airways and shopping strips in Miami, from their cars,  
11 looking for potentially vulnerable wireless access  
12 points. When they found one, they would park in  
13 adjacent lots or sit nearby in rented rooms with laptop  
14 computers until they were able to compromise the  
15 perimeter of the retailer's computer network. Once  
16 inside, they would search the network for credit and  
17 debit card information either in storage or traveling  
18 across the network in an unencrypted state.

19 Gonzalez sold much of the credit card information  
20 on line through different elicited vendors. He also  
21 provided portions to co-conspirators who used the stolen  
22 payment card information to imprint blank cards and  
23 withdraw hundreds of thousands of dollars from victims'  
24 accounts through ATM machines. In each instance,  
25 Gonzalez, often directed that he be paid in an

1 off-shore-based internet currency or by wire transfer to  
2 a bank account in Latvia. The task then was to  
3 repatriate that money, convert it to untraceable  
4 currency, and ship the currency anonymously back to  
5 Gonzalez.

6 That's where the defendant's role comes in. At  
7 the end of 2005 and in the beginning of 2006, Humza  
8 Zaman traveled to California on Albert Gonzalez's  
9 direction on at least three occasions. There he met  
10 with an unknown man of apparent Eastern European  
11 descent. On each occasion, Zaman picked up between  
12 50,000 and \$300,000 in currency. Zaman then put the  
13 currency in Federal Express boxes and shipped the money,  
14 using a fictitious name, to Gonzalez in Miami. Zaman  
15 also picked up money for shipment to Gonzalez on  
16 approximately three occasions in New York, but each of  
17 these were for significantly lesser amounts of money.  
18 For his efforts, Gonzalez paid Zaman approximately 10  
19 percent of the money he picked up and shipped.

20 THE COURT: Which comes to about how much?

21 MR. HEYMANN: We do not have a precise amount  
22 of shipment. The shipment was -- because there were no  
23 records kept from which we can draw. It was between --  
24 the shipment was between 300 and \$750,000,  
25 approximately, which would make 10 percent between 30



1 and \$75,000 in payments.

2 THE COURT: And you're not bound by this, but  
3 what do you think -- well, would the guidelines be based  
4 on what the defendants received at 30 or 70,000 or some  
5 larger number because of the scope of what the  
6 government will argue was a conspiratorial agreement?

7 MR. HEYMANN: I believe, your Honor, that  
8 the -- um, I think I have to address that in two parts.  
9 I think he is bound by the broader conspiratorial  
10 agreement, but I think the broader conspiratorial  
11 agreement, um, as it existed when he was active, does  
12 not encompass the entirety of TJX that our best figure,  
13 as a result for approximating his role, is the amount of  
14 money he himself transferred and was involved in  
15 transferring, being the 300 to \$750,000, and that, to  
16 take it to the last step, that as a result his guideline  
17 range, with acceptance of responsibility, would be  
18 somewhere between 37 and 46 months. But that the figure  
19 appropriate, as the best approximation we have of his  
20 role in the conspiracy, is the 300 to \$750,000 figure.

21 THE COURT: But I'm not bound by that figure  
22 if it looks different to me at sentencing, correct?

23 MR. HEYMANN: That is correct, your Honor.

24 THE COURT: Okay. Does somebody have a  
25 waiver-of-indictment form to be signed?

1 MR. HEYMANN: Yes, I believe he's already  
2 signed a waiver-of-indictment form and he has it there.  
3 But I have another copy of it.

4 THE COURT: Well, I'm going to have to ask him  
5 a series of questions to see whether it's accepted. But  
6 if I'm persuaded it's appropriate, then I'll need to  
7 sign the form.

8 All right. The defendant should approach the  
9 witness stand and be sworn, please, and counsel can go  
10 with him ideally with a copy of the information and the  
11 plea agreement.

12 (THE DEFENDANT, sworn.)

13 THE COURT: Would you please state your true  
14 full name.

15 THE DEFENDANT: Humza Zaman.

16 THE COURT: And do you understand that you've  
17 just taken an oath to answer the questions I'm going to  
18 ask you truthfully and any failure to do that could be a  
19 separate prosecutable criminal offense?

20 THE DEFENDANT: I do, your Honor.

21 THE COURT: Do you also understand that if  
22 you're confused by any of my questions or unsure about  
23 what an honest or accurate answer would be, I'll give  
24 you a chance to talk to your attorney so we can clear up  
25 any confusion and so you can give me a reliable

1 response?

2 THE DEFENDANT: Thank you, your Honor. Yes.

3 THE COURT: Okay. How old are you?

4 THE DEFENDANT: 32.

5 THE COURT: Where were you born?

6 THE DEFENDANT: New York.

7 THE COURT: How far did you go in school?

8 THE DEFENDANT: Um, college. Some college. I  
9 went to some colleges.

10 THE COURT: Okay. You're going to have to  
11 keep your voice up.

12 Do you have any trouble understanding or speaking  
13 English?

14 THE DEFENDANT: No.

15 THE COURT: Are you today under the influence  
16 of any drug, medication or alcohol?

17 THE DEFENDANT: No.

18 THE COURT: Have you ever been treated for  
19 mental illness or drug addiction?

20 THE DEFENDANT: Um, I did like a one-day drug  
21 program in New York five years ago.

22 THE COURT: Okay. Have you retained an  
23 attorney in this case?

24 THE DEFENDANT: I have.

25 THE COURT: And do you have a copy of the

1 information charging you with conspiracy?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: Do you understand that the charge  
4 against you is a charge that's punishable by more than  
5 one year in prison and therefore is a Federal felony?

6 THE DEFENDANT: I do.

7 THE COURT: And did you read that conspiracy  
8 charge in the information against you?

9 THE DEFENDANT: I did.

10 THE COURT: Did you discuss it with your  
11 attorney?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that when a  
14 Federal felony like this one is involved, you have a  
15 right to be charged by a grand jury rather than in an  
16 information issued by the United States Attorney's  
17 Office, like this one?

18 THE DEFENDANT: I do.

19 THE COURT: Do you understand that the grand  
20 jury is made up of 16 to 23 people and at least 12 of  
21 them would have to find there's probable cause to  
22 believe you committed the crime for you to be indicted  
23 and charged by the grand jury?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you understand that if this

1 matter is presented to a grand jury, it might or might  
2 not return an indictment against you?

3 THE DEFENDANT: I do, your Honor.

4 THE COURT: Do you understand that if I accept  
5 your waiver of indictment, this case will proceed based  
6 on this information just as if you had been charged by  
7 the grand jury in an indictment?

8 THE DEFENDANT: I do, your Honor.

9 THE COURT: Have you talked with your lawyer  
10 about whether you would like to waive indictment?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Are you fully satisfied with his  
13 work on your behalf?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you have there a copy of the  
16 letter dated February 17, 2008 to Mr. Brackley from the  
17 United States Attorney's Office?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Is that your plea agreement with  
20 the government?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: I'll mark it Exhibit 1 of today's  
23 date.

24 Did you sign that agreement on the last page?

25 THE DEFENDANT: I have, your Honor.

1 THE COURT: Did you read the agreement before  
2 you signed it?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Did you discuss it with  
5 Mr. Brackley before you signed it?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Did you feel you understood that  
8 letter before you signed it?

9 THE DEFENDANT: Yeah. Yes, your Honor.

10 THE COURT: Does that letter both accurately  
11 and completely describe your agreement with the  
12 government?

13 THE DEFENDANT: Yes.

14 THE COURT: Has anybody made any promises to  
15 you or given you any assurances that are not in that  
16 letter?

17 THE DEFENDANT: No.

18 THE COURT: Has anybody threatened you or  
19 tried to force you to plead guilty?

20 THE DEFENDANT: No.

21 THE COURT: Do you understand that, on Page 4  
22 of that letter, you're giving up certain rights you  
23 would ordinarily have to appeal or otherwise challenge  
24 decisions in this case?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Specifically do you see that  
2 you're giving up any right to challenge your conviction  
3 or your sentence within the statutorily-authorized  
4 range? Well, I'm going to have to see what that means.

5 When you say "statutorily-authorized range," do  
6 you mean that's below the statutory maximum?

7 MR. HEYMANN: Yes, your Honor.

8 THE DEFENDANT: What is the statutory  
9 maximum?

10 THE COURT: We're going to get to that. Well,  
11 the statutory maximum is -- well, it should be in  
12 Paragraph 1 on Page 1. The maximum penalty of 5 years  
13 in prison, 3 years of supervised release, and  
14 restitution of what amount?

15 MR. HEYMANN: Again, your Honor, the best  
16 approximation was 300 to \$750,000.

17 THE COURT: Restitution of up to \$750,000. Do  
18 you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that you could  
21 also be fined up to \$250,000?

22 THE DEFENDANT: Yes, I read that. Yes, your  
23 Honor.

24 THE COURT: Do you understand that "supervised  
25 release" means that when you're released from prison,

1     you'll be under the supervision of the Probation  
2     Department and if you violate any of the conditions of  
3     your supervised release, you can be locked up again for  
4     up to 3 years in this case?

5             THE DEFENDANT: Yes, your Honor.

6             THE COURT: Going back to the appellate rights  
7     on Page 4.

8             Do you understand that you do -- you would still  
9     have the right to appeal any sentence based on the  
10    contention that I, in a legally and correct way,  
11    calculate the guideline range that would be the starting  
12    point, but not the ending point for determining your  
13    sentence?

14            THE DEFENDANT: Yes, your Honor.

15            THE COURT: And have you talked with  
16    Mr. Brackley specifically about whether you want to give  
17    up these rights of an appeal?

18            THE DEFENDANT: Yes, your Honor.

19            THE COURT: And is that something you want to  
20    do?

21            THE DEFENDANT: Um, yes, your Honor.

22            THE COURT: Have you also talked to him about  
23    whether you want to give up your right to be -- to have  
24    this matter presented to a grand jury and have it  
25    proceed based on the information?



1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right. And is that what you  
3 want to do?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Then I'll accept your waiver of  
6 indictment because I find you're competent, you're  
7 effectively represented, and you're acting knowingly and  
8 voluntarily.

9 Would you like this information read to you or do  
10 you want to waive the reading of the information?

11 THE DEFENDANT: Yes, I'll waive the reading.

12 THE COURT: And how would you like to plead,  
13 guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: Then we'll move to the -- I'll ask  
16 you some more questions to determine whether I should  
17 accept your guilty plea.

18 Do you understand that if I accept your guilty  
19 plea, you'll become a Federal felon and you may lose  
20 certain rights, including the right to vote, to hold  
21 public office, to serve on a jury, and to possess a  
22 firearm?

23 THE DEFENDANT: Yes.

24 THE COURT: And do you understand that if you  
25 were not a United States citizen, you would also be

1 subject to deportation?

2 THE DEFENDANT: Okay.

3 THE COURT: Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that the  
6 sentencing, in this case, will be governed by the  
7 Advisory Guideline System that is now in effect in  
8 Federal court?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Have you talked with Mr. Brackley  
11 about how that system might operate in your case?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand, however, that,  
14 as we sit here today, neither Mr. Brackley nor the  
15 prosecutor nor anybody else can tell you with certainty  
16 what the guideline range is for your sentence or what  
17 sentence I will impose, because until I conduct the  
18 sentencing hearing I cannot make those decisions  
19 myself?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand that, in unusual  
22 cases, I have the power to give a sentence that's higher  
23 or lower than the guideline range, but in most cases, I  
24 find that it's most appropriate to give a sentence that  
25 is within the guideline range?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand that while  
3 you've given up certain of your rights to appeal, the  
4 government hasn't given up any of its rights to appeal?

5 THE DEFENDANT: Um, yes. Um, meaning another  
6 judge could change your sentence?

7 THE COURT: If the government -- well, if the  
8 -- yeah, I want to explain this to you.

9 Under your -- do you understand that, under your  
10 plea agreement, you've given up your right to appeal my  
11 sentence except based on an argument that I incorrectly  
12 calculated the guideline range?

13 THE DEFENDANT: Right. Yes.

14 THE COURT: Do you understand, however, that  
15 the government has a right to appeal my sentence?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And do you understand that that  
18 means that if the government is unhappy with the  
19 sentence I give you and believes or wants to argue that  
20 I made a legal error in giving that sentence, it could  
21 appeal, and if my decision was reversed, you would be  
22 sentenced again probably by another judge?

23 THE DEFENDANT: Yes, your Honor. I  
24 understand.

25 THE COURT: Do you understand that there's no

1 parole in the Federal system, so if I sentence you to  
2 prison, you will have to serve substantially all of that  
3 time in prison?

4 THE DEFENDANT: Yup. Yes, your Honor.

5 THE COURT: Do you understand that if I give  
6 you a sentence that's higher than you hoped for or even  
7 higher than the government recommends, that won't be a  
8 reason permitting you to withdraw your plea?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Do you understand that you still  
11 have a right, if you want to use it, to have your case  
12 decided by a jury at a trial?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And do you understand that if we  
15 had a trial, you would have a right to an attorney and  
16 if you couldn't afford an attorney, one would be  
17 appointed to represent you at public expense?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that if we had a  
20 trial, you would be presumed innocent, you would not  
21 have to prove you were innocent, rather the government  
22 would have to prove you were guilty beyond a reasonable  
23 doubt to achieve your conviction?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you understand that if we had a

1 trial, you would have an opportunity, through your  
2 lawyer, to object to the government's evidence and  
3 challenge its witnesses?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that you would  
6 also, at a trial, have an opportunity, but not an  
7 obligation to present a defense including an opportunity  
8 to compel witnesses to come testify and documents to be  
9 produced?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that at any  
12 trial you would also have an opportunity, but not an  
13 obligation, to testify yourself and if you decided not  
14 to testify, I would instruct the jury that it could draw  
15 no suggestion that you were guilty from your decision  
16 not to testify?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And do you understand that if I  
19 accept your plea of guilty, you'll be giving up your  
20 right to a trial and there will be no trial?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: All right. Now, do you understand  
23 that the information in this case charges you with  
24 engaging in a conspiracy in violation of 18 United  
25 States Code, Section 371, and that allegedly was a

1 conspiracy to achieve or to violate several Federal  
2 laws?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And do you understand that to  
5 prove a conspiracy, or the conspiracy charged in this  
6 case, the government would have to prove beyond a  
7 reasonable doubt, first, that the agreement described in  
8 the indictment, and not some other agreement, existed  
9 between at least two people; second, that you willfully,  
10 that is, intentionally and knowing it was illegal,  
11 joined in that agreement; and, third, that one of the  
12 co-conspirators committed an overt act during the period  
13 of the conspiracy and that is an act intended to  
14 accomplish at least one of the goals of the conspiracy.  
15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: And then do you understand the  
18 Government would have to prove that one of the alleged  
19 goals, not all of the alleged goals of the alleged  
20 conspiracy existed?

21 THE DEFENDANT: Yes.

22 THE COURT: And it's alleged that one goal of  
23 the conspiracy was the unlawful access of computers in  
24 violation of Section 1030(a)(2)(C) of the United States  
25 Code, that is, by means of interstate communications,

1 "Intentionally accessing, without authorization,  
2 computers which were used in interstate commerce and  
3 thereby obtaining information from those computers,  
4 including credit and debit card information, for the  
5 purpose of commercial advantage and private gain."

6 Do you understand that that's one of the alleged  
7 goals of the conspiracy?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And do you understand that to  
10 prove that -- an agreement to commit that crime, the  
11 government would have to prove an agreement to  
12 intentionally access a computer, without authorization,  
13 to obtain information from that computer to be used for  
14 commercial advantage or for financial gain, and the  
15 access of the computer had to involve communications  
16 between one state or another state or the United States  
17 and a foreign country. Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Speak into the microphone, please.

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Then a second alternative goal of  
24 the alleged conspiracy was access device fraud in  
25 violation of 18 United States Code, Section 1029(a)(3).

1 It is charged here: "Knowingly, and with intent to  
2 defraud, possessing at least 15 unauthorized access  
3 devices, particularly stolen credit and debit card  
4 use."

5 Do you understand that to prove a violation of  
6 Section 1029(a)(3), the government would have to prove  
7 beyond a reasonable doubt that one of the -- well, the  
8 co-conspirators sought to use -- I'm sorry, to possess  
9 at least 15 unauthorized access devices, which are --  
10 which include stolen credit or debit card numbers, and  
11 to possess them knowingly, and that's intentionally, and  
12 with intent to defraud, meaning to use them to deceive  
13 or cheat someone out of money.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: All right. The third alleged  
17 object of the conspiracy was to commit wire fraud. Do  
18 you understand that to prove wire fraud, the Government  
19 would have to prove beyond a reasonable doubt, first, a  
20 scheme substantially as charged in the indictment to  
21 defraud or obtain money or property by means of false or  
22 fraudulent pretenses; and second, a co-conspirator's,  
23 including your knowing, and that means intentional and  
24 willful, knowing it was illegal, participation in the  
25 scheme with intent to defraud, meaning to cheat somebody



1 out of money; and third, the use of interstate or  
2 foreign wire communications, and that means wire  
3 communications going from one state to another or from  
4 the United States to a foreign country.

5 Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: The fourth alleged and alternative  
8 goal of the conspiracy is aggravated identity theft in  
9 violation of 18 United States Code, Section 1028(a),  
10 knowingly transferring, possessing and using, without  
11 lawful authority, a means of identification of other  
12 persons, particularly credit and debit card account  
13 numbers of individuals, during and in relation to the  
14 commission of wire fraud, as I just described it.

15 Do you understand that to prove this crime, the  
16 government would have to prove that a goal of the  
17 conspiracy was to knowingly use -- and "knowingly" here  
18 means intentionally and with knowledge that the means of  
19 identification was -- it really belonged to another  
20 person, it wasn't fictitious -- um, a means of  
21 identification of another person, without lawful  
22 authority, in connection with committing wire fraud as  
23 I've described it.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

1           THE COURT: Mr. Heymann, I may ask you for a  
2 proposed instruction on Section 1956(a)(1) -- I'm sorry,  
3 (a)(1)(B)(i), if it's necessary.

4           But the last alleged goal of the conspiracy is  
5 money laundering in violation of 18 United States Code  
6 Section 1956(a)(1)(B)(i) and (a)(2)(B)(i).

7           Do you understand that to prove a violation of  
8 Section 1956(a)(1)(B)(i), the government would have to  
9 prove beyond a reasonable doubt, first, that a -- that  
10 the conspiracy was aimed to enter into a financial  
11 transaction or transactions with a financial institution  
12 engaged in interstate commerce -- and that's business  
13 between one state and another; second, that the  
14 transaction used the proceeds of unlawful activity;  
15 third, that you, among others, knew that they were the  
16 proceeds of some kind of crime that amounted to a state  
17 or Federal felony; and fourth, that you knew the  
18 transaction or transactions were designed, in whole or  
19 in part, to conceal or disguise the nature, location,  
20 source, ownership or control of the proceeds of that  
21 criminal activity.

22           Do you understand that?

23           THE DEFENDANT: Yes, your Honor.

24           THE COURT: I think we can probably dispense  
25 with the definition of the second alternative here.

1           Um, once again, did you read this information?

2           THE DEFENDANT: I did, your Honor.

3           THE COURT: And you see that it charges, in  
4 Count 1, from approximately 2003 to 2008, in the  
5 Southern District of Florida and the Southern District  
6 of New York and the District of Massachusetts and  
7 elsewhere, you, and others known and unknown to the U.S.  
8 Attorney, did willfully, and that means intentionally  
9 and knowing that it was illegal, conspire to commit the  
10 crimes I just covered with you, unlawful access to  
11 computers, access to device fraud, wire fraud,  
12 aggravated identity theft, and money laundering as  
13 described on Pages 1 through 3, and that at least one of  
14 the co-conspirators committed one of the alleged overt  
15 acts in furtherance of the conspiracy charged on Page  
16 4.

17           Did you commit that crime of conspiracy?

18           THE DEFENDANT: Um, yeah, I knew about this  
19 stuff, this conspiracy, yes.

20           THE COURT: Well, having in mind the -- what I  
21 told you the government must prove, that you -- I mean,  
22 did you knowingly and intentionally, knowing it was  
23 illegal, agree to participate in a scheme with at least  
24 one of these goals?

25           THE DEFENDANT: Yes, your Honor.

1           THE COURT: And did you know that one of the  
2 co-conspirators committed one of the overt acts listed  
3 on Page 4, which include, for example, between November  
4 21, 2005 and November 25, 2005, you, using ATM cards  
5 linked to accounts in the names of fictitious and  
6 unrelated individuals, to repatriate, get back to the  
7 United States, \$38,000 from Latvian bank accounts  
8 specified by Albert Gonzalez, and that you sent the  
9 proceeds, minus 10 percent, which you kept, to Gonzalez  
10 in Miami. Did you do that?

11           THE DEFENDANT: Um, yes, but I -- this 38,000  
12 I don't know about.

13           THE COURT: All right. But some amount of  
14 money?

15           THE DEFENDANT: Yes.

16           THE COURT: All right. Now listen while the  
17 government summarizes what its evidence would have been  
18 if this case went to trial against you and then I'll ask  
19 you if you agree with the government's summary of what  
20 you did.

21           MR. HEYMANN: Your Honor, the government would  
22 simply repeat what it said earlier to the Court by way  
23 of facts. If you'd like me to do so, I'm happy to do  
24 so, or not.

25           THE COURT: Well, do you have in mind what the

1 government told me earlier about the conspiracy and your  
2 role in it?

3 THE DEFENDANT: Yes, I recall what the  
4 government said then.

5 THE COURT: Okay. And do you agree with what  
6 the government told me?

7 THE DEFENDANT: Yup. Yes, your Honor.

8 THE COURT: All right. And how do you now  
9 wish to plead to this one count against you, guilty or  
10 not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: Okay. Then I'll direct the Clerk  
13 to enter your plea of guilty because I find that you are  
14 competent, you are acting knowingly and voluntarily, you  
15 are effectively represented and there's an independent  
16 basis in fact for your guilty plea.

17 You may take your seat back at the table.

18 THE DEFENDANT: Thank you, your Honor.

19 (Is seated.)

20 THE COURT: The Magistrate Judge, I  
21 understand, has set the conditions of release. I will  
22 sign the waiver of indictment.

23 (Signs.)

24 THE COURT: Unless somebody has a foreseeable  
25 conflict, the sentencing will be on August 11 at

1 3:00 p.m.

2 If there's anything, except the information and  
3 the presentence report, that anybody would like me to  
4 consider, any motions, any memos, any letters, they  
5 shall be filed by July 28th and responses shall be filed  
6 by August 4.

7 Is there anything further in this matter for  
8 today?

9 (Silence.)

10 THE COURT: The Court is in recess.

11 (Ends, 5:15 p.m.)

12  
13 C E R T I F I C A T E  
14

15 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do  
16 hereby certify that the foregoing record is a true and  
17 accurate transcription of my stenographic notes, on April  
28, 2009, before Chief Judge Mark L. Wolf, to the best of  
my skill and ability.

18  
19 /s/ Richard H. Romanow 4-06-10

20 \_\_\_\_\_  
21 RICHARD H. ROMANOW Date  
22  
23  
24  
25